Supreme Court, U.S.
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No. 04-1146

IN THE
Supreme Court of the United States

JEFFREY BUBNA,

Petitioner,

v.

ANCHORAGE EQUAL RIGHTS COMMISSION, MUNICIPALITY OF ANCHORAGE, PAULA HALEY in her official capacity as the Executive Director of the Alaska State Commission for Human Rights,

Respondents,

On Petition For A Writ Of Certiorari To The Supreme Court Of The State Of Alaska

REPLY BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

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Appendix A

Affidavit of Jeffrey D. Bubna filed in Alaska Superior Court 1a

ARGUMENT

I. BUBNA HAS STANDING AND HIS CLAIMS ARE RIPE UNDER ARTICLE III

A pre-enforcement First Amendment challenge to a proscriptive law that carries legal penalty for violation is justiciable if it is brought by a plaintiff who is or will be squarely subject to the law – at least absent an express government disclaimer of an intent to enforce. *See Virginia v. American Booksellers Ass'n*, 484 U.S. 383, 386-393 (1988); *Babbitt v. United Farm Workers Nat'l Union*, 442 U.S. 289, 298-301 (1979); *Doe v. Bolton*, 410 U.S. 102, 140 (1973); *Epperson v. Arkansas*, 393 U.S. 97, 102 (1968); *Reno v. Catholic Social Services*, 509 U.S. 43, 57 (1993). As the Court stated in *Reno:* "[i]n some cases, the promulgation of a regulation will itself affect parties concretely enough to satisfy" the ripeness component of justiciability. *See also Pacific Gas & Elec. Co. v. State Energy Res. Cons. and Dev. Comm'n*, 461 U.S. 190, 200-202 (1983);[1] *EPA v. National Crushed Stone Ass'n*, 449 U.S. 64, 72 n. 12 (1980);[2] *Abbott Laboratories v. Gardner*, 387 U.S. 136, 140, 152-153 (1967); *Gardner v. Toilet Goods Ass'n, Inc.*, 387 U.S. 167, 171-172 (1967).

Where a law is proscriptive in nature and creates a

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[1]In *Pacific* this "Court permitted utilities to challenge a state law imposing a moratorium on the certification of nuclear power plants, even though the utilities had not yet applied for a certificate." *Reno*, 509 U.S. at 69 (O'Connor, J., concurring) *citing Pacific*, 461 U.S. at 200-202.

[2]In *National Crushed Stone*, "the Court held that a facial challenge to the variance provision of an EPA pollution-control regulation was ripe even 'prior to application of the regulation to a particular [company's] request for a variance.'" *Reno*, 509 U.S. at 69 (O'Connor, J., concurring) *quoting National Crushed Stone*, 449 U.S. at 72 n. 12.

"duty" which the plaintiff must obey subject to legal penalty, the plaintiff's pre-enforcement claim is justiciable "[w]here the inevitability of the operation of a statute against certain individuals [the plaintiff] is patent." *Reno*, 509 U.S. at 57; *Id.* at 68-69 (O'Connor, J., concurring).[3]

The decision most directly on point is *Booksellers*, 484 U.S. 383. *Booksellers* involved a pre-enforcement challenge to a statute that made it unlawful, subject to criminal penalty, to knowingly display sexually explicit material accessible to juveniles. *Id.* at 386. The law required the plaintiffs to choose between (1) ceasing to sell covered material, (2) barring juveniles from their establishments, or (3) modifying the manner in which they displayed sexually explicit material. *Id.* at 388. This Court unanimously ruled that the plaintiffs' claims were justiciable stating that it was "not troubled by the pre-enforcement nature of this suit," which was brought before the law became effective. *Id.* at 392-393. The Court reached this conclusion because (1) the law was "aimed directly at plaintiffs, who, if their interpretation of the statute is correct, will have to take significant and costly compliance measures or risk criminal prosecution,"[4] and (2) "[t]he State has not suggested that the newly enacted law will not be enforced." *Id.* The Court found the possibility that the challenged law might chill First Amendment rights virtually determinative:

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[3]As Justice O'Connor explained: "[I]t is irrelevant to the existence of a justiciable controversy that there will be a time delay before the disputed provisions will come into effect."... If it is "inevitable" that the challenged rule will "operat[e]" to the plaintiff's disadvantage . . . then there may well be a justiciable controversy that the court may find prudent to resolve." *Reno*, 509 U.S. at 69 (O'Connor, J., concurring).

[4]*Id.* at 392 *citing Craig v. Boren*, 429 U.S. 190, 194 (1976); *Bolton*, 410 U.S. at 188.

> We are not troubled by the pre-enforcement nature of this suit. The State has not suggested that the newly enacted law will not be enforced, and we see no reason to assume otherwise. We conclude that plaintiffs have alleged an actual and well-founded fear that the law will be enforced against them. Further, the alleged danger of this statute is, in large measure, one of self-censorship; a harm that can be realized even without an actual prosecution.

Id. at 393.[5]

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[5]Haley admits Bubna was neither a party nor privy to *Thomas v. Anchorage Equal Rights Comm'n*, 220 F.3d 1134 (9th Cir. 2000) and, therefore, is not bound by its judgment. (Haley 4-5) The Ninth Circuit en banc panel's opinion in *Thomas* is an aberration that ignores *Booksellers*, contradicts four prior Ninth Circuit decisions (*See Thomas*, 220 F.3d at 1142-48 (O'Scannlain, J., concurring, Kleinfeld, J., dissenting)), and conflicts with precedent from virtually every other circuit. Other circuits rule that a proscriptive law with legal penalty is sufficient to make a claim justiciable when it is brought by a plaintiff who is subject to the law, regardless of any threat of prosecution (let alone "imminent" prosecution). *See Rhode Island Assoc. of Real., Inc. v. Whitehorse*, 199 F.3d 26, 28 (1st Cir. 1999); *North Carolina Right to Life, Inc. v. Bartlett*, 168 F.3d 705, 709-711 (4th Cir. 1999); *Navegar, Inc. v. United States*, 103 F.3d 994, 999-1001 (D.C. Cir. 1997). Other circuits rule that the prospective chilling of constitutional rights sustains justiciability regardless of any threat of prosecution (let alone "imminent" prosecution). *See Nutritional Hlt. All. v. Shalala*, 144 F.3d 220, 226-227 (2nd Cir. 1998); *ACLU v. Johnson*, 194 F.3d 1149, 1153-1155 (10th Cir. 1999). Other circuits rule that the inability to predict when a violation of the law or an enforcement might occur is not an obstacle to justiciability. *See Presbytery of New Jersey v. Florio*, 40 F.3d 1454, 1458-1464 (3rd Cir. 1994); *Doe v. Beaumont*, 173 F.3d 274, 280-284 (5th Cir. 1999); *Hays v. City of Urbana*, 104 F.3d 102, 103-104 (7th Cir. 1997). The First and Third Circuits have held that a government refusal to disclaim an intent to enforce sustains justiciability, regardless of any evidence of any prosecution at any time. *Whitehorse*, 199 F.3d at 28

The housing laws at issue here are aimed directly at landlords like Bubna and have been interpreted to require rental to unmarried cohabitors regardless of religious beliefs.[6] Unlike the law in *Booksellers* which had not yet even become effective, these laws, that carry both civil and criminal penalties,[7] are currently in effect, have been civilly enforced in the past against identical landlords in actions twice proceeding through the Alaska Supreme Court, and were recently administratively enforced against another identical landlord, Alaska Pacific University.[8]

(justiciability to challenge 20 year old law which had never been enforced); *Presbytery*, 40 F.3d at 1458-1464 (no evidence of when, if at all, clergyman might violate ordinance). The Sixth Circuit rules that present harm caused by a proscriptive law sustains justiciability, regardless of any threat of prosecution (let alone "imminent" prosecution). *National Rifle Ass'n of America v. MaGaw*, 132 F.3d 272, 282-288 (6th Cir. 1997). Finally, the Eighth Circuit rules that criminal action is not necessary to demonstrate a threat of enforcement, and even a government's civil defense of a law shows an intent to enforce. *Minnesota Citizens Concerned for Life v. FEC*, 113 F.3d 129, 130-131 (8th Cir. 1997). The Ninth Circuit itself does not even follow *Thomas* at this time, ignoring it in virtually superposable circumstances. *See Cal. Pro-Life Council, Inc. v. Getman*, 328 F.3d 1088, 1093-95 (9th Cir. 2003) ("the self-censorship door to standing does not open for every plaintiff"); *City of Auburn v. Qwest Corp.*, 260 F.3d 1160, 1170-72 (9th Cir. 2001) ("the very promulgation of a law may itself affect a party enough to satisfy the constitutional requirement").

[6] *Foreman v. Anchorage Equal Rights Comm'n*, 779 P.2d 1199 (Alaska 1989); *Swanner v. Anchorage Equal Rights Comm'n*, 874 P.2d 274 (Alaska 1994).

[7] *See* AS 18.80.270 (misdemeanor punishable by $500 fine or up to 30 days in jail). Both laws allow the agencies to initiate investigations, hold hearings, compel attendance, enjoin violations, and issue appealable compliance orders. *See* AS 18.80.100-.145; AMC 5.30.010-.090.

[8] *Alaska State Comm'n for Human Rights ex. Rel. Kristiann Kutzler v. Alaska Pac. Univ., ASCHR No. C-96-010.* In 1996 Haley's Alaska State Commission for Human Rights investigated a student's complaint of marital

More compelling than *Booksellers*, Bubna has violated the laws in the past by turning away unmarried cohabitors, he presently violates the laws by offering his properties for rent under policies that prohibit rental to unmarried cohabitors, he periodically violates the laws by turning away unmarried cohabitors, and he plans to violate the laws in the future.[9] ASCHR is commanded to enforce the laws without waiting for

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status discrimination against APU regarding allegations that APU had refused to rent her married student housing so that she could cohabit with her boyfriend. (Exc. 76) ASCHR found that substantial evidence supported the student's allegations. (Exc. 77) ASCHR initiated an enforcement action against APU under the housing discrimination law, AS 18.80.240, alleging that APU had discriminated against the student on the basis of her cohabiting status. (Exc. 136-138) APU alleged that it is a Methodist based university with religiously based ("Christian") policies against renting housing to unmarried cohabiting couples. (Exc. 139-146 ¶¶ 2, 7) APU raised a First Amendment free exercise of religion defense. (Exc. 144, First Aff. Def.) ASCHR took no further action on the APU Complaint while the federal *Thomas* case was pending, maintaining that Alaska's religious landlords face no threat of prosecution. (Exc. 158) *See also Thomas*, 220 F.3d at 1141 n.7. ***After*** the *Thomas* case was dismissed from federal court, ASCHR resumed prosecution against APU. (Exc. 154) In April, 2001 ASCHR and APU settled the enforcement action. (Exc. 158-161) By way of the settlement, ASCHR enforced the laws against APU by requiring the University to both denounce and revoke its religiously based rental policy. (Exc. 160-161, ¶¶ IIIA, IIIC)

[9](Exc. 188-94) (Reply App. 1a-9a) Although the majority of the Ninth Circuit en banc panel in *Thomas* expressed "prudential" ripeness concerns because they did not understand the exact combinations of unmarried individuals to whom Christian landlords might decline rental, *Thomas*, 220 F.3d at 1142 and n.8, this lack of understanding disregarded the record in that case and defies common sense. Justices O'Scannlain and Kleinfeld observed that, "it is hard to take seriously" "the majority's prudential concern about the need for a record to show just whom" Thomas and Baker "propose to discriminate against." 220 F.3d at 1144 n.1, 1149. Bubna has been crystal clear that the unmarried individuals to whom he declines rental are those who intend to "cohabit," *i.e.* live together in a sexually intimate relationship, in his properties.

a citizen complaint and is not allowed to be a mere complaint-taking bureau.[10] Like Virginia, the government here has pointedly refused to disclaim an intent to enforce the laws against Bubna.[11] The only thing separating Bubna from prosecution for his now known and admitted past and present acts of discrimination is prosecutorial caprice. There is no need for fact finding at this time because the Alaska Court's fact finding will sustain federal justiciability. (Cert Petition App. 10a-11a). The Alaska court looks to federal precedent when determining ripeness. *Brause v. State*, 21 P.3d 357, 358-61 (Alaska 2001).[12] The decision below thus resolves ripeness.

Haley's suggestion that Bubna could solve his dilemma

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[10]*See Hotel, Motel, Rest., Constr. Camp Employees & Bartenders Union v. Thomas*, 551 P.2d 942, 945 (Alaska 1976) (ASCHR has no discretion to ignore violations of the marital status discrimination law).

[11]At oral argument before the Ninth Circuit en banc panel, Justice O'Scannlain squarely asked Respondents to disclaim an intent to prosecute landlords and Respondents refused to give the disclaimer.

[12]Like *Booksellers*, Bubna is presently harmed and chilled in his First Amendment rights because he is now faced with the equally onerous choices of (1) abandoning his livelihood; (2) disposing of his properties; (3) self-censoring his religiously motivated speech; (4) refraining from advertising for tenants who do not present religious concern; (5) complying with the laws by renting to unmarried cohabitors, thereby violating his religious beliefs regarding marriage, cohabitation, and facilitation of sin; (6) complying with the laws by designating his properties as "married housing", thereby depriving himself of the ability to rent to a sizeable portion of the rental market; and/or (7) disobeying the laws, regarding both discrimination and speech, thereby violating his religious beliefs about honoring his government and its laws. Bubna believes that he is commanded by God to honor his government and its laws. (App. 166a-169a, 172a-176a); *Romans* 13:1-7. The danger of these laws is in large measure one of present religious injury and self-censorship; harm that is realized even without prosecution. *Booksellers*, 484 U.S. at 393.

by classifying his property as "married housing" is incorrect. Single or unmarried tenants comprise a substantial part of the rental market. *See America's Families and Living Arrangements*: 2003 (Population Characteristics), http://www.census.gov/prod/2004pubs/p20-553.pdf (U.S. Census Bureau Nov. 2004) (hereafter "Census"). Forfeiting the entire "single" tenant market would harm Bubna economically.

Doe v. Bolton, 410 U.S. 179 also confirms justiciability in this case. In *Bolton*, doctors alleged that abortion statutes infringed their associational and occupational liberty. *Id.* at 185. This Court had no difficulty concluding that the doctors, licensed physicians consulted by pregnant women, presented justiciable claims although none of them had ever been prosecuted, or threatened with prosecution. *Id.* at 188. Like the doctors subject to the abortion laws in *Bolton*, Bubna is the landlord against whom these laws directly operate. Unlike *Bolton*, where the abortion laws had never been enforced or threatened against doctors, *id.* at 188-189, these laws have been enforced and threatened against landlords in the recent past and present.[13] Further, the laws here, like the abortion laws, are fairly recent in application and effect and have not been allowed to slip into desuetude. *Id.* at 189.[14] Bubna, like the doctors in *Bolton*, "should not be required to await and undergo a criminal prosecution as the sole means of seeking relief." *Id.*

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[13] *Foreman*, 779 P.2d 1199; *Swanner*, 874 P.2d 274; *Alaska Pacific University*.

[14] The Georgia statute was five years old at the time of *Bolton*. *Id.* at 181-182. These laws had been applied to unmarried cohabitors only six years, *Foreman*, 779 P.2d 1199, and held applicable to religious landlords like Bubna only nine months, *Swanner*, 874 P.2d 274, as of the filing of the federal *Thomas* action. Enforcement of the laws was enjoined for four years during the federal litigation. *See Thomas*, 220 F.3d at 1138.

at 188.[15]

II. THERE ARE NO INDEPENDENT AND ADEQUATE STATE GROUNDS

The Alaska Supreme Court's decision is not based upon independent and adequate state grounds simply because the court adhered to *Swanner* under state law principles of *stare decisis*. In reaching its judgment the lower court necessarily rejected Bubna's First Amendment claims. This rejection of the federal claims is an essential and mandatory portion of the

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[15] *Accord Steffel v. Thompson*, 415 U.S. 452, 480 (1974) (Rehnquist, J., concurring) ("the declaratory judgment procedure is an alternative to pursuit of an arguably illegal activity"). *Epperson*, 393 U.S. 97 also confirms the justiciability of Bubna's claims. *Epperson* involved a biology teacher's challenge to an anti-evolution statute which made it a misdemeanor, and cause for employment termination, to teach the theory of evolution to public school students. 393 U.S. at 100-101. Despite the fact that (1) the teacher had never violated the law, been prosecuted, been threatened with prosecution, been fired, or even threatened with firing, (2) in the law's 40 year existence no one had ever been prosecuted or fired, and (3) the law was "more of a curiosity than a vital fact of life," this Court ruled that it was its "duty to decide the issues presented." *Id.* at 102. *See also Pierce v. Society of Sisters*, 268 U.S. 510 (1925) (suit commenced four years before law was to take effect, and resolved *on the merits* by this Court two years before its effective date); *FEC v. Akins*, 524 U.S. 11, 25 (1998) (voters seeking information from AIPAC presented a justiciable challenge to the FEC's determination that AIPAC was not a "political committee" and thus not subject to disclosure, despite the possibility that the FEC might have exercised its discretion to decline prosecution against AIPAC for non-disclosure even if the voters were right that AIPAC was a "political committee"); *Babbitt*, 442 U.S. at 298-301 (plaintiffs presented justiciable challenge to union election procedures of Arizona statute even though they "admittedly have not invoked the Act's election procedures in the past nor have they expressed any intention of doing so in the future"); *Abbott*, 387 U.S. at 148-153 (purely legal questions do not present prudential ripeness concerns, and plaintiffs subject to proscriptive laws which mandate specified conduct subject to penalty for non-compliance present justiciable claims).

Alaska court's decision that predominates its judgment. The lower court's application of *stare decisis* simply enabled it to identify the precedent that it would rely upon when rejecting Bubna's federal claims.[16]

The Alaska Court's judgment will not stand if this Court disagrees with the reasoning of *Swanner* and reverses the judgment in this case on the federal questions.[17] It is of no consequence that the Alaska Court adhered to *Swanner* under state law principles of *stare decisis*. A state law ground is not independent and adequate unless it is broad enough, without reference to the federal question, to sustain the state court judgment, notwithstanding any error in deciding the federal question.[18]

Because Bubna argued substantial federal questions (Haley App. 1-12, 13-15) this Court's review is proper no matter what device the Alaska court used to avoid issuing

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[16]The lower court's adherence to *Swanner* no more renders the decision one on independent and adequate Alaska state law grounds than reliance upon *Attorney General v. Desilets*, 636 N.E.2d 233, 236 (Mass. 1994) would have rendered the decision one on independent and adequate Massachusetts state law grounds.

[17]The independent and adequate state ground doctrine only applies "[w]hen the outcome of a state court case could *not* be changed, even if the federal law issue were resolved differently by the United States Supreme Court. . . ." Justice O'Connor, *Our Judicial Federalism*, 35 Case W. L. Rev. 1, 5 (1984) (emphasis in original). *See also Zacchini v. Scripps-Howard Broadcasting Co.*, 433 U.S. 562, 566 (1977); *Herb v. Pitcairn*, 324 U.S. 117, 125-126 (1945).

[18]*See Eustis v. Bolles*, 150 U.S. 361, 370 (1893); *Beaupre v. Noyes*, 138 U.S. 397, 401 (1891). The question this Court must ask is whether the same judgment would be rendered by the state court after this Court has corrected any error in its view of the federal law. *See Pitcairn*, 324 U.S. at 125.

substantive reasoning on the federal claims.[19] Even if the Alaska court had ignored the federal questions altogether the decisive consideration would be whether the federal questions were brought to the attention of the state court with fair precision and in due time. *See New York ex. Rel. Bryant v. Zimmerman*, 278 U.S. 63, 67 (1928). This case presents substantial federal questions.

CONCLUSION

For the reasons stated, the Court should grant the petition for a writ of certiorari to the Alaska Supreme Court.

Respectfully submitted,

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Dated: May 6, 2005

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[19] *See Sullivan v. Little Hunting Park*, 396 U.S. 229, 232-34 (1969); *Douglas v. Alabama*, 380 U.S. 415, 421-22 (1965); *Wright v. Georgia*, 373 U.S. 284, 289-91 (1963). By adhering to *Swanner*, however, the Alaska court did adopt substantive reasoning regarding the federal claims. *See In re Wallace's Bookstore, Inc.*, 106 Fed. Appx. 341, 2004 WL 1763229 (6th Cir. 2004). In *Wallace* the Sixth Circuit issued only a memorandum opinion adhering to its prior decision in *Hood v. Tenn. Student Assis. Corp.*, 319 F.3d 755 (6th Cir. 2003) under principles of *stare decisis*. This Court nonetheless granted certiorari to review the *Wallace* decision on April 4, 2005 in *Central Virginia Comm. College v. Katz*, No. 04-885.

APPENDIX

APPENDIX A
AFFIDAVIT OF JEFFERY BUBNA FILED IN STATE COURT

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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

KEVIN THOMAS, JOYCE BAKER, and JEFFREY BUBNA,

Plaintiffs,

5.

ANCHORAGE EQUAL RIGHTS COMMISSION; the MUNICIPALITY OF ANCHORAGE; and PAULA HALEY in her Official Capacity as the Executive Director of the ALASKA STATE COMMISSION FOR HUMAN RIGHTS,

Defendants.

Case No. 3AN-01-7003 Civil

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

AFFIDAVIT OF JEFFREY BUBNA

JEFFREY BUBNA, being first duly sworn, deposes and states:

1. I am a resident of Anchorage, Alaska, I am over the age of eighteen, I am one of the named plaintiffs in this action and I have personal knowledge of the facts stated below.

2. Understanding that the local housing laws are proscriptive in nature and carry both civil and criminal penalties, that Alaska government agencies are statutorily and judicially mandated to not be mere complaint taking bureaus but rather to enforce the laws by seeking out and eradicating discrimination, that the agencies have thrice enforced the laws in past legal action against similarly situated landlords and twice through the Alaska Supreme Court, and that the agencies refuse to disclaim an intent to enforce the laws, I filed this action in order to vindicate my and my wife's federal Constitutional rights.

3. My wife and I are also presently proscribed from engaging in religiously motivated speech regarding our beliefs and practices, including, but not limited to, conversations with prospective tenants and in written statements, notices, and advertisements. My wife and I genuinely and immediately need to know whether a constitutionally valid law prohibits us from acting and speaking as we are, have been, and would like to, in the exercise of our religious beliefs.

4. My wife, my children, and I are devoted members of the Christian faith.

5. I have attended and served the Christian Church for many years. I was raised in a Christian home, with my father being the senior pastor of a large Christian & Missionary Alliance ("CMA") Church in Salem, Oregon. I have attended CMA churches my entire life in both Oregon and now in Alaska. I have served as a board member in several of the churches I have attended.

6. As Christians, my family's and my religious beliefs are founded upon the Bible, which we believe to be the absolute, true and infallible word of God.

7. We believe that cohabitation between unmarried couples constitutes the sin of fornication and is grievously offensive to God. We understand that cohabitation means "to live together in a sexual relationship when not legally married."

8. We believe that if we were to assist or facilitate someone else's cohabitation, we would commit sin ourselves, render ourselves hypocrites, and disqualify myself and my wife from serving as an Elder, Deacon, or Deaconess in the Christian Church. An "Elder," "Deacon," or "Deaconess" in the Christian Church is a man or woman who oversees the affairs of the church. I also believe that I would be a hypocrite in my children's eyes if I were to facilitate someone else's cohabitation. The Bible delineates the qualifications of an Elder, Deacon, or Deaconess. Although some churches make a distinction between the two, a church "board member" is essentially the modern day equivalent of an "elder." I Timothy 3:1-7; Titus 1:5-9.

9. We believe that we are commanded by God to honor our government and its laws. Our religious beliefs regarding cohabitation are rooted in a widely held tradition within Christianity, extending from the Old Testament to the New Testament, the teachings of Christ, the Apostle Paul, the Apostle Peter, and the Reformation leader John Calvin. Genesis 2:24; Exodus 22:16; Leviticus 19:20; Deuteronomy 22:13-21, 23:17; Proverbs 2:16, 5:3-6, 6:24-29, 7, 29:3; Ecclesiastes 7:26; Hosea 4:11; Acts 15:19-20; Jude 7; Revelation 2:14, 21:18, 22:15; Matthew 15:16-20; Mark 7:18-23; Romans 1:29; I Corinthians 5:9-11, 6:9; II Corinthians 12:21; Galatians 5:19-21; Ephesians 5:5; Colossians 3:5-6; I Thessalonians 4:3-4; I Timothy 1:8-11; Hebrews 13:4; I Peter 4:1-6; John Calvin, Calvin's Commentaries: The Epistles of Paul to the Romans and to the Thessalonians 359 (David W. Torrance & Thomas F. Torrance, eds. Ross Mackenzie trans., 1960). We sincerely believe that marriage between a man and a woman is the only relationship, created by God, in which two people are to live together in sexual intimacy. Our religious belief that we are commanded by God to honor our government and its laws is founded upon the teaching of the Apostle Paul; we sincerely believe that intentional civil disobedience to our government is another form of sin against God. Romans 13:1-7 (New American Standard trans.) ("Every person is to be in subjection to the governing authorities. For there is no authority except from God, and those which exist are established by God. Therefore, whoever resists authority has opposed the ordinance of God; and they who have opposed will receive condemnation on themselves.") We believe that "[a]ll scripture is given by inspiration of God." II Timothy 3:16.

10. I own and manage residential rental properties in the greater Anchorage, Alaska area. Although I own and manage the rental properties which I obtained prior to our marriage, I consider my wife to be an equal partner with me

regarding business decisions. My rental property consists of (a) a tri-plex located at 18223 Were Street, Chugiak, AK; and (b) a single family house located at 18243 Were Street, Chugiak, AK. I live with my wife and our three children in the upstairs unit of the tri-plex. Tenants in the two downstair rental units in the tri-plex use separate entrances to enter and leave their units, but do share some common driveway and yard with me and my family.

11. Our rental business is significantly impacted by our Christian faith because we commit ourselves to practice our beliefs in all aspects of our lives, including our commercial activities. We rent property without regard to race, religion, gender, and marital status. We rent to persons of all races, of any religion, of both genders, single persons, men and women married to one another, separated or widowed persons, single parents and grandparents. We have never declined to rent to anyone because of their race, national origin, religion, gender, age, parental status, or divorced status. We have never used our religious beliefs regarding marriage and cohabitation as a disguise for discrimination on any other legally prohibited basis.

12. Based solely upon our Christian beliefs, we will not rent to unmarried couples who cohabit.

13. I offer my properties for rent under management policies which prohibit rental to unmarried cohabitors. Every time I offer or list property for rent, I do so to the exclusion of unmarried cohabiting couples. I am required to offer or list property for rent on an average of at least once per year. I have previously declined to rent to unmarried cohabitors on many occasions since I first became a landlord, on an average of about once per year and sometimes more often.

14. In 2000 I received one rental inquiry from a young lady named Sanchez, who explained to me that she and her "fiancee" had moved to Alaska from Colorado. I turned her away because of my policy to decline rental to unmarried cohabiting couples; I would have been happy to rent to the couple had they been married. Later that same year, I received a rental inquiry from a Jennifer Boyd, the daughter of family friends. Jennifer explained to me that she was looking for a place for "me and my fiancee," and I turned her down because I do not rent to unmarried cohabiting couples. Again, I would have been happy to rent to the couple had they been married. In 1999, I received a rental inquiry from an acknowledged lesbian couple, and I similarly turned them away because I decline to rent to unmarried *cohabiting* couples.

15. I always ask for or otherwise determine a potential tenant's marital status. I also inform unmarried cohabitors of our religious beliefs regarding marriage and cohabitation because I believe that it would be contrary to God's will to lie, and I believe that we should stand up and be recognized as Christ's followers. I continue in this rental practice and periodically am required to turn unmarried cohabitors away in order to remain true to my Christian convictions. I experience on average about one vacancy per year in my rental units. When trying to fill a vacancy, I am presented with at least one, sometimes more, unmarried cohabiting couples who inquire about renting from me.

16. I do keep some records of the tenants I have turned away, and some of these records reflect the marital status of the prospective tenants. In addition to the records which I have, I also recall that I have been required to turn away at least one unmarried cohabiting couple per year since I became a landlord, and in the year 2000 two such couples. I have to violate the local housing laws in order to make and keep

records of the marital status of applying tenants. Both state statute and municipal ordinance make it unlawful to "make a written or oral . . . record of the . . . marital status of a person seeking to . . . lease, or rent real property. . . ." AS 18.80.240(3); AMC 5.20.020(C). This is one of those situations where no matter which way I turn, I end up violating one of my religious beliefs. If I ignore the unmarried status of the couple I violate my beliefs regarding marriage and cohabitation. I feel compelled to ask whether a couple is married because I know that there is a risk I may be violating my religious convictions regarding facilitation of sin if I do not ask. Sometimes I am lucky and determine that they are an unmarried couple without asking because they volunteer information or make their status obvious. If I ask, then I violate my religious beliefs regarding honoring the government and its laws. When I turn away the unmarried couple I again violate my religious beliefs regarding honoring the government and its laws.

17. Although the laws prohibit such inquiries, I always determine the marital status of a cohabiting couple asking to rent our units. I sometimes learn of the unmarried cohabiting status of prospective tenants simply by asking who the proposed occupants of the unit will be, with answers such as "my boyfriend," "my girlfriend," "my partner," or "my fiancee" clearly indicating unmarried cohabitation. At other times, I identify a cohabiting couple by simply directly asking "are you married?" and if the answer received is "no," by asking further whether the pair are a "couple?"

18. The key factor in my decision regarding whether to rent to an unmarried combination of individuals, is religious in nature, and it is simply whether the individuals are cohabiting. Like any landlord I also make business decisions regarding whether prospective tenants are credit worthy. I have no religious objection to renting to non-cohabiting combinations

of unmarried individuals, such as male or "female roommates, married individuals not living with their spouses, a brother and a sister, a disabled female with a male caretaker, a single father with a female nanny, and so on. The basis of my religious objections to renting to an unmarried combination of individuals is cohabitation. I do not pry into people's private lives. If prospective tenants are unmarried and a couple then I assume cohabitation and decline to rent to them.

19. Our religious beliefs do not require us to assume that people are untruthful, so I generally take tenants at their word (while still exercising common sense) about whether they are in truth a non-cohabiting combination of individuals.

20. Each and every time I inquire of the marital status of a couple asking about rental (every time we have a vacancy and seek tenants I must make this inquiry, and we have at least one vacancy per year and sometimes more), every time I learn that the applying couple is unmarried and cohabiting (which happens on average once per vacancy, on an average of once per year and sometimes more); and every time I turn away an unmarried cohabiting couple (on average once per year and sometimes more), I do so knowing that I am violating the law and that the couple could complain to the state or municipal human rights commissions so that an agency enforcement action would be initiated against us.

21. Every time that I inquire of prospective tenants regarding marital status I do so knowing that I am violating the local housing laws, and thus violating our religious beliefs about honoring our government and its laws. Romans 13. If I do not inquire of a couple's marital status, however, then I risk violating our religious beliefs regarding marriage and cohabitation.

22. If we were not prohibited by law, I would include in our rental applications direct questions regarding the marital status of couples wishing to rent from us. Furthermore, if not prohibited by law, I would list, notice, and advertise our vacant rental units in the newspaper and otherwise with statements and limitations stating our religious beliefs and explaining that we do not rent to unmarried cohabiting couples. I have asked the Anchorage Daily News ("AND") to print ads for rental units indicating religious limitations against renting to unmarried cohabiting couples, and I have been told by the AND that it cannot print such ads because they are "discriminatory" and "prohibited by law."

23. The municipal ordinance actually states that we are not to express our preference about not wanting to rent to unmarried couples, and does not limit to whom we might be talking when expressing this preference. This law is so vague that it is impossible for us to know when or how we might be breaking the law each and every time we talk about our beliefs regarding marriage and cohabitation and facilitating sin with other people. We often are called into situations where we talk with people regarding our religiously based rental preferences, at church and otherwise in public and private conversations.

/s/
JEFFREY BUBNA

SUBSCRIBED & SWORN to before me, a Notary Public in and for the State of Alaska, this 4th day of June , 2001, at Anchorage, Alaska.

/s/
Eileen Frison
NOTARY PUBLIC in and for Alaska.
My Commission Expires:1/23/02